

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MC ALLEN DIVISION

MC ALLEN GRACE BRETHREN CHURCH, et al.,	§	
	§	
Plaintiffs,	§	
	§	No. 07-CV-060
v.	§	
	§	
UNITED STATES ATTORNEY GENERAL, et al.,	§	
	§	
Defendants.	§	
	§	

**PLAINTIFFS' RESPONSE TO MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
TO STAY PENDING THE RESOLUTION OF PARALLEL CRIMINAL PROCEEDING**

1. Plaintiffs resist the Government's Motion to Dismiss and agree to stay proceedings, pending Judge Crane's opinion of Michael Todd Cleveland v. U.S. Attorney General, et al. and the U.S. Solicitor's determination concerning the petition for remission.
2. Plaintiffs agree to remove Michael Todd Cleveland from civil suit until his criminal case is resolved, as long as Michael Todd Cleveland can rejoin Plaintiffs later.
3. Plaintiffs ask for a temporary injunction against the Government's seizure of feathers at American Indian Powwows—specifically, the Nde Daa Springtime Gathering, also known as the Way South Powwow, in McAllen, Texas, pending the outcome of the case for the following reason:

Throughout the 19<sup>th</sup> century and much of the 20<sup>th</sup> century, American Indians in Texas and across the United States held their powwows in secret, fearing arrest, incarceration and prosecution by government agents for performing their ceremonial songs, dances and religious ceremonies.<sup>1</sup>

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<sup>1</sup> In Letter to U.S. Solicitor Martin Steinmetz seeking remission of Rev. Robert Soto's feathers, we indicated:

The First Amendment to the U.S. Constitution states that Congress shall make no laws respecting the establishment of religion and prohibiting the free exercise thereof. Time after time, the Federal Government has chosen to ignore this provision when it comes to American Indians. In 1873, a "ban on most Native ceremonial practices including the sweat lodge continued until the 1930s. These laws were actively enforced, and there are many cases of Native people being fined or jailed simply because they took part in a sweat lodge." Joseph Bruchac, an expert on Indian religious ceremonies of Abenaki Indian ancestry, noted that documentation can "be found in the National Archives in Washington, D.C. of case after case in which Native Americans were denied the freedom to publicly congregate, the freedom of speech, and the freedom of worship. Circular No. 1655, dated April 26, 1921, deals with Indian dancing and contains this statement: *The sun-dance and*

It was not until 1989 that the Lipan Apache family of Rev. Robert Soto announced and sponsored the Nde Daa (Way South Powwow) in McAllen, Texas. It was the oldest, continuous, open powwow in south Texas, until spring 2007.

Because of the circumstances surrounding the Government's seizure of feathers on March 11, 2006, the spring 2007 Nde Daa (Way South Powwow) was not announced to the public, nor were date, time, and location of powwow announced to the public.

Many of the Indians that were informed of the powwow refused to attend because of the March 11, 2006 Government raid the year before. Many of those who did attend would not don regalia or dance at the 2007 powwow. Clearly, the Government's raid has had a chilling effect on American Indians and the Free Exercise of Religion at the McAllen powwow, as well as other powwows throughout the state where American Indians have declined to attend or stop dancing altogether, since they cannot wear their regalia adorned with feathers of protected species of birds.

4. Such other and further relief as warranted.

Respectfully submitted,

/s/ Marisa Y. Salazar  
Marisa Y. Salazar, Regional Counsel  
New Mexico Bar No: 25887

Dr. Milo Lone-Eagle Colton, Regional Counsel  
Nebraska Bar No: 19693

Civil Rights Legal Defense & Edu. Fund, Inc.  
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*all similar dances and so-called religious ceremonies are considered 'Indian Offenses' under existing regulations and corrective penalties are provided. (Italics provided)*

Bruchac continues: "In order to survive, many Native religious practices had to go underground." As a result of the Civil Rights Movement, enactment of laws such as the Religious Freedom Restoration Act (RFRA),<sup>1</sup> as well as enforcement of the Free Exercise and Equal Protection Clauses of the U.S. Constitution, Indians have opened their pow wows to the public to share with non-Indians the joy, power and beauty of their Native religious ceremonies and culture. In a News Channel 5 broadcast on March 30, 2006, the reporter interviewing Rev. Soto and Special Agent Rodriguez noted the confiscation of Rev. Soto's feathers could turn back the clock on pow wows in Texas. According to the reporter: "Until their tribes are recognized, the feathers are off-limits. Native Indians say that means they will be having their pow wows in secret."

To prevent the tragedy of forcing Texas Indians to go underground to celebrate their Native religion, we are asking that the Federal Government return Rev. Soto's feathers and bustle. Moreover, we are asking the Federal Government to affirm that it shall be the policy of the United States to protect and preserve for *all* American Indians, including those American Indians enrolled in federally recognized tribes, as well as those American Indians not enrolled in federally recognized tribes, their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, including but not limited to access to sites, use and possession of sacred objects (such as eagle feathers), and the freedom to worship through ceremonial and traditional rights.

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ATTORNEYS IN CHARGE FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing pleading was sent to Jimmy Rodriguez, counsel for the following persons via electronic mail at: jimmyrodriguez@usdoj.gov, on this 1<sup>st</sup> day of June, 2007:

Alberto Gonzalez, Attorney General of the United States, at the United States Department of Justice,

Dirk Kempthorne, Secretary of the United States Department of the Interior,

H. Dale Hall is the Director, United States Fish and Wildlife Service (USFWS),

Kevin R. Adams, Chief of the Office of Law Enforcement for United States Fish and Wildlife Service (USFWS),

Richard McDonald, Special Agent in Charge of the Office of Law Enforcement for Region Two of the United States Fish and Wildlife Service (USFWS),

Benjamin Tuggle, Acting Director for Region Two of the United States Fish and Wildlife Service (USFWS),

Donald J. DeGabrielle, Jr., United States Attorney for the Southern District of Texas,

Gary Young, Resident Special Agent in Charge for the USFWS Office of Criminal Investigations in Mc Allen, Texas,

Martin Steinmetz, Office of the Field Solicitor, at U.S. Solicitor's Office.

/s/ Marisa Y. Salazar

Marisa Y. Salazar